

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IGNACIO VANHORN,

Petitioner,

v.

CARMEN D. PALMER,

Respondent

Case No. 2:09-cv-10492

HONORABLE STEPHEN J. MURPHY, III

ORDER ACCEPTING AND ADOPTING REPORT AND RECOMMENDATION (docket 15)

Before the Court is the Report and Recommendation of the Honorable Paul J. Komives, United States Magistrate Judge. The magistrate judge served the Report and Recommendation on the parties on September 25, 2009. The petitioner filed objections.¹ For the reasons stated below, the Court overrules the petitioner's objections and adopts the magistrate judge's Report and Recommendation.

The Court's standard of review for a magistrate judge's Report and Recommendation depends upon whether a party files objection. If a party objects to portions of the Report and Recommendation, the Court reviews those portions de novo. 28 U.S.C. §636(b)(1)(C). De novo review in these circumstances requires at least a review of the evidence before the magistrate judge; the Court may not act solely on the basis of a magistrate judge's report and recommendation. See 12 Wright, Miller & Marcus, Federal Practice and Procedure: Civil 2d § 3070.2 (1997); see also *Hill v. Durion Co.*, 656 F.2d 1208, 1215 (6th

¹Petitioner filed a motion for an extension of time to file objections [docket entry 16]. The respondent has not opposed this extension, and the Court will therefore grant the extension and consider petitioner's objections, which would otherwise be untimely.

Cir. 1981). After reviewing the evidence, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations of the magistrate judge.” 28 U.S.C. §636(b)(1).

The Court has conducted a de novo review of the record and finds that the petitioner’s objections are without merit. The reasoning of the magistrate judge in the Report and Recommendation is sound and correct. In particular, the record establishes that petitioner’s plea was valid, voluntary and intelligent under federal constitutional standards and petitioner’s right to due process of law was not violated by the trial court’s failure to *sua sponte* hold a hearing on petitioner’s competence before accepting the plea. The record therefore provides no basis for according federal habeas relief.

Accordingly, after having reviewed the magistrate judge’s Report and Recommendation, the petitioner’s objections, and the applicable portions of the record, **IT IS HEREBY ORDERED** that petitioner’s motion for extension of time to file response [docket entry no. 16] is **GRANTED**.

IT IS FURTHER ORDERED that petitioner’s objections [docket entry no. 17] to the Report and Recommendation are **OVERRULED**.

IT IS FURTHER ORDERED that the Report and Recommendation [docket entry no. 15] is **ACCEPTED AND ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that petitioner’s application for the writ of habeas corpus is **DENIED**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: April 12, 2010

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 12, 2010, by electronic and/or ordinary mail.

Alissa Greer
Case Manager